

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMES MCGIBNEY, an individual; and
VIA VIEW, INC., a corporation.
Plaintiffs,

v.

CASE NO. 5:14-cv-01059-BLF

THOMAS RETZLAFF, an individual;
NEAL RAUHAUSER, an individual;
LANE LIPTON, an individual;
and DOES 1-5, individuals whose true
names are not known,
Defendants.

DEFENDANT RETZLAFF'S ADMINISTRATIVE MOTION TO STRIKE
PLAINTIFF VIAVIEW'S FILINGS

Defendant Thomas Retzlaff submits this administrative motion (L.R. 7-11) asking the court to strike all of the recent court filings by plaintiff ViaView due to the fact that ViaView is no longer a legal entity authorized to do business and it has no standing to sue.

I. INTRODUCTION

1. Plaintiff ViaView, Inc. is a company incorporated in Delaware with a license to do business issued solely by the state of Nevada. See attached Exhibits 1 and 2.

2. On June 30, 2015, it was discovered by Retzlaff that ViaView did not have a license to do business in Nevada anymore and, in fact, that it has no license to do business in any of the fifty United States of America; thus, it is operating without any legal authority whatsoever. 2015 Nevada Revised Statute section 76.100 makes it illegal to conduct business in Nevada unless or until that person has obtained a state business license from the Nevada Secretary of State's Office. N.R.S. §76.100.

II. ARGUMENT

3. As evidenced by the attached July 30, 2015, letter, the Nevada Secretary of State's Office has determined that ViaView is not authorized to do business and it has been operating illegally. See attached Exhibit 3.

4. While plaintiffs' counsel will likely argue that this is just a "technical violation", under the law there is no such thing as a "technical violation." Either you are in compliance or you are not. It is Retzlaff's position that because ViaView is no longer a legal entity authorized to do any business since at least June 29, 2015, all of the pleadings filed on behalf of ViaView since that date should be stricken.

5. The reason why the documents should be stricken is, because at the time they were filed, ViaView did not have the legal capacity to file or defend a suit. As the Court knows, a party has capacity to file or defend suit if it has the legal authority to do so. See *Black's Law Dictionary* 249 (10th Ed. 2014). The capacity of a corporation to sue or be sued is determined by the law under which it was organized.

Fed. R. Civ. P. 17(b)(2). In this case, it is the state of Nevada and under the law of the state of Nevada, ViaView does not have the capacity to sue or be sued.

6. Retzlaff requests that the Court should strike ECF 180, ECF 181, ECF 187, and ECF 188 as they pertain to ViaView only.

7. Even if ViaView were to go back and get the proper licenses, it still does not matter because, at the time it filed these documents it had no legal capacity to act. This is similar to one driving without a driver's license. Even if they go out and get a proper license – and insurance – today, that does not change the fact that for months and months they were operating illegally. Or like someone contracting as a minor or a mental retard. If you do not have the capacity to act, any actions done are void.

8. The capacity to contract and to sue and be sued is fundamental to ViaView's ability to participate in this lawsuit. ViaView is currently in violation of NRS §76.180 and is facing fines of up to \$10,000 for each occurrence.

III. NOTICE OF TAX INVESTIGATION

9. Opposing Counsel Jay Leiderman likes to repeatedly come into this Court with breathless, dramatic pronouncements about how Retzlaff is under 'super-secret' investigations by all kinds of FBIs, CIAs, police and everything else. See, e.g., Opp. to D's FRCP 11 Motion, section XI, line 21 (ECF 187) and Leiderman Declaration at ¶7 (ECF 187-1, pg 2). Obviously these claims are very stupid and not to be believed. But what this Court can believe, and what plaintiff McGibney and attorney

Leiderman already know (or shortly will know) is that they are the ones under investigation – and there is nothing ‘super-secret’ about it.

10. As we speak, the Nevada Attorney General’s Office is investigating plaintiffs ViaView and McGibney for operating an illegal business in the state of Nevada. Specifically, as well all know by now, plaintiffs run a revenge pornography / blackmail company. Nevada Assembly Bill 49 makes it a felony to engage in this kind of conduct and Chapter 200 of the Nevada Revised Statutes has been revised to reflect this change; thus, a complaint has been filed and an investigation is being conducted.

11. In addition the Nevada Department of Taxation has opened up a file and is conducting its own investigation, too, to see where the revenge porn money is coming from, whether it is being properly accounted for, and (most importantly) properly taxed.

12. **But the news gets even worse for our plaintiffs**, and this news even includes Leiderman, too! One of the most vicious, merciless, and brutal organizations on the planet has taken an interest in the finances and activities of our trio – that organization is the California Franchise Tax Board since McGibney and Leiderman claim residency in California and say that ViaView has one of its “business centers” in San Jose. Specifically, according to conversations Retzlaff has had, full scale audits are being conducted on the below listed individuals:

<u>NAME</u>	<u>SSN</u>
James Alex McGibney	XXX-XX- 5888
Christina Marie Orduna-McGibney	XXX-XX- 9175
Jason Scott Leiderman	XXX-XX- 8543

13. It should also be noted that Retzlaff has been providing financial information on these people to both the **Internal Revenue Service** as well as the **Franchise Tax Board** in support of their investigations into each of these individuals and their business practices. If McGibney and Leiderman have not yet been contacted by them, they shortly will be – 100% VERIFIED.

14. And, for the record, Retzlaff still has never been contacted by any law enforcement agency on the plant with regards to any of the nonsense claims that Leiderman and McGibney have made about him. No one is trying to arrest Retzlaff. No one is investigating Retzlaff. (not that it matters)

III. CONCLUSION

15. The legal capacity to sue and be sued is essential for ViaView. From June 29, 2015, to the present date, plaintiff ViaView has no such legal capacity and, as such, all of the documents filed on its behalf must be stricken or otherwise disregarded by the Court.

Respectfully submitted,

/s/ Thomas Retzlaff

Thomas Retzlaff

PO Box 46424

Phoenix, AZ 85063-6424

Defendant, pro se

CERTIFICATE OF SERVICE

I certify that on July 31, 2015, a copy of this document was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the following attorney in charge for plaintiffs ViaView & James McGibney:

Jason Scott Leiderman, of 5740 Ralston Street Ste 300, Ventura, CA 93003, Email: Jay@Criminal-Lawyer.me.

I certify that Jay Leiderman is a registered CM/ECF user and that service will be accomplished by the CM/ECF system.

I certify that on July 31, 2015, a copy of this document was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the following attorney in charge for defendant Lane Lipton:

Clark Anthony Braunstein, of 11755 Wilshire Boulevard, Suite 2140, Los Angeles, CA 90025, Email: Clarkbraunstein@gmail.com.

I certify that Clark Anthony Braunstein is a registered CM/ECF user and that service will be accomplished by the CM/ECF system.

/s/ Thomas Retzlaff

Thomas Retzlaff

Defendant, pro se

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**ORDER GRANTING
DEFENDANT RETZLAFF'S MOTION TO STRIKE PLAINTIFF VIAVIEW'S
PLEADINGS**

It is hereby ordered that Retzlaff's motion is granted and the Court strikes ECF 180, ECF 181, ECF 187, and ECF 188 as to how they pertain to plaintiff ViaView.

IT IS SO ORDERED.

The Honorable Beth Freeman,
U.S. District Judge

Dated: _____